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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Note verbale dated 25 March 1993 from the Permanent Mission of Austria to the United Nations Office at Geneva

The Austrian Mission to the United Nations Office at Geneva has the honour to forward an Austrian position paper concerning the United Nations World Conference on Human Rights to be held in Vienna in June 1993. This paper has been elaborated by the Austrian National Committee for the Conference and should be distributed as a background document of the fourth session of the Preparatory Committee for the World Conference.

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World Conference on Human Rights

Vienna, June 1993

AUSTRIAN POSITION PAPER

A thorough preparation of the World Conference on Human Rights in 1993 requires due consideration of the International Conference on Human Rights, held in Tehran from 22 April to 13 May 1968. The Proclamation of Tehran then adopted was an attempt to reconcile in a balanced way the diverging views expressed. Thus, the document addressed the indivisibility of human rights, the need for bridging the gap in the realization of human rights between the economically developed and developing countries, the condemnation of racial discrimination as well as of the policy of apartheid, the protection of the family, of women, of the younger generation, the dangers that technological advances pose to the development of human rights, and the necessity of disarmament. In addition to the Proclamation, the Conference adopted resolutions initiated by individual Participating States and designed to highlight specific human rights issues.

The forthcoming World Conference on Human Rights, if it is to ensure a maximum degree of continuity in the universal human rights standards, will have to start from the programme and the results achieved in Tehran.

1. Progress achieved by the United Nations in the field of human rights

1.1. Standard setting

On the basis of the Universal Declaration of Human Rights adopted on 10 December 1948, the United Nations has accomplished a comprehensive codification of universal human rights standards. At its core are the International Covenant on Civil and Political Rights, including the two Optional Protocols thereto, the International Covenant on Economic, Social and Cultural Rights, both of 1966, as well as a series of special conventions, which have enhanced the protection of particularly important rights or have created specific rights for persons belonging to particularly vulnerable groups. Certain of these conventions, like the two International Covenants, provide for special procedures for international monitoring of the national implementation of the rights guaranteed therein. The codification work achieved by the United Nations, which has been complemented by a number of regional human rights conventions, constitutes a major advance on the road towards international protection of human rights. It covers all the essential spheres of human life and therefore can be considered, by and large, as completed.

In Austria's opinion, future codification work in the human rights field within the framework of the United Nations should, in particular, focus on the following areas:

(a) A convention for the protection of persons belonging to religious, linguistic or ethnic minorities;

(b) A declaration on tolerance;

(c) A convention on international enforcement of individual responsibility for massive human rights violations;

(d) Further elaboration of minimum standards for the administration of justice;

(e) The creation of an international legal basis for a preventive system of human rights protection, such as the creation of a worldwide preventive visiting system for detention centres, based on the model of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(f) The creation of an efficient early warning system for the prevention of ethnic, religious or national conflicts.

As regards regional systems of human rights protection, the United Nations should intensify its efforts to bring about an Asian Human Rights Convention and step up its support of the African Commission for Human and Peoples' Rights. Moreover, the establishment of an African Court of Human Rights should be envisaged as a long-term option. Regional conventions serve an important function wherever solutions to human rights problems arising from political, economic, religious or cultural aspects of specific regions are called for. However, these regional systems of human rights protection must never fall behind the universally recognized minimum standards laid down by the United Nations.

1.2 Control mechanisms

Since 1948, and in particular following the International Conference in Tehran in 1968, the United Nations has also made substantial progress with regard to international mechanisms for monitoring respect for human rights.

Of all treaty bodies, the Human Rights Committee deserves special mention. The quasi-judicial decisions taken by the Committee under the individual communications procedure not only paved the way for a dynamic interpretation of the human rights laid down in the International Covenant on Civil and Political Rights; in many individual cases, they also put a halt to specific human rights violations and the States parties concerned were induced to adapt their respective laws and jurisdiction. The reporting system, too, has allowed the Human Rights Committee to engage in a dialogue both constructive and critical with state representatives, thereby setting new parameters. The publication of so-called "general comments" has also contributed to the standardization of law in this field. The recent practice of the Human Rights Committee of publishing so-called "country specific comments", has transformed the reporting procedure into an efficient monitoring system. In a similar vein, the Committee on Economic, Social and Cultural Rights, created in 1985, has proved in a number of trend-setting initiatives that the reporting system may serve as an efficient instrument for implementation.

Of even greater significance is the progress in effective human rights protection realized by the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities since the Tehran Conference on the basis of the Charter of the United Nations. In 1968, the "domestic jurisdiction" clause (art. 2, para. 7) of the Charter still largely precluded the consideration of complaints about specific human rights violations by United Nations bodies (the only exceptions being southern Africa and Israel). To argue that the examination of systematic violations of human rights, or of human rights issues as such, fall exclusively within domestic jurisdiction is no longer tenable today. Over the past years, a wide range of human rights violations in almost all countries of the world have been dealt with, not only under the confidential procedure based on Economic and Social Council resolution 1503 (XLVIII), but also under the public procedure based on Council resolution 1235 (XLII). In more than 60 cases concrete measures have been taken with respect to the States involved: resolutions have been adopted which condemned specific human rights violations, experts have been designated to offer their advisory services for improving the situation of human rights, and special rapporteurs and working groups have been given broad mandates for fact-finding and monitoring activities in the countries concerned (hitherto South Africa, Israel, Chile, Equatorial Guinea, Bolivia, El Salvador, Guatemala, Poland, Afghanistan, the Islamic Republic of Iran, Romania, Cuba, Iraq, occupied Kuwait and the former Yugoslavia). In cases of particularly grave and systematic human rights violations, such as enforced disappearances, summary or arbitrary executions, torture, religious intolerance, child trafficking or arbitrary arrests, so-called "thematic" rapporteurs or working groups have been created who strive to combat these phenomena on a worldwide scale through "silent diplomacy" or public denouncements.

Only recently, the Security Council joined other United Nations bodies in stepping up its efforts to give broader attention to the protection of human rights and democracy within the framework of its peace-keeping and peace-making operations. Examples include the operations in Namibia, El Salvador, Cambodia, Somalia as well as in Iraq and the former Yugoslavia. In some instances human rights considerations have even had an impact on whether or not binding sanctions were taken in accordance with Chapter VII of the United Nations Charter, as in the cases of the former Southern Rhodesia and South Africa as well as, more recently, the measures taken concerning Iraq, the former Yugoslavia and Somalia.

2. The implementation of international human rights standards: difficulties and new possibilities

The above-mentioned progress achieved in setting universal human rights standards and in creating a variety of international implementation procedures contrasts with the fact that in many States human rights are violated systematically, and that in some States or regions the situation of human rights has even further deteriorated. The causes and forms of an unsatisfactory human rights situation are manifold and require further investigation. The following list gives examples of only a few conditions and factors contributing to human rights violations and is by no means exhaustive:

- Autocratic systems of government with inadequate judicial, political or other controls;

- Ethnic, national, racial, religious, political and social conflicts with great potential for violence and insufficient conflict-solving mechanisms;

- The existence of disproportionate arsenals as well as growing trade in, and proliferation of, arms. This trend not only diverts badly needed resources from development, it also induces the use of military force to "solve" national as well as international conflicts and also very often defies control by a civilian Government;

- Abuse of the state of emergency and suspension of human rights for the purpose of repression for political, social, ethnic or religious reasons;

- Terrorism, international organized crime (e.g. drug trafficking) and human rights violations inflicted by death squads and other non-governmental agents acting with the tacit approval of state authorities, as well as insurgents, resistance groups, etc.;

- Spiritual and religious patterns of behaviour or ideologies of intolerance - both by the State and between individuals - which deny, or at least put into question, the existence of universally binding minimum standards of human rights, such as racism, totalitarianism, religious and ideological fundamentalism, xenophobia, etc.;

- A world economic system characterized by a continuous spiral of over- and underdevelopment which leads to the impoverishment of large parts of the population in the so-called "Third World";

- A population growth not in line with the expansion of the natural basis of subsistence; the progressive destruction of the environment depriving a large part of the population in the South of their natural basis of subsistence, causing famines and extreme poverty; thus aggravating the degree of impoverishment already existing.

Some forms of systematic violations of human rights concern women in particular. For the enforcement of the existing human rights standards protecting this particularly vulnerable group to be effective it is indispensable that systematic violations of human rights of women be taken more clearly into account.

Lately, emphasis has increasingly been put on the development of the political and economic infrastructure (personal and institutional) in the countries of the so-called "Third World", in addition to legitimate claims to the transfer of resources from the North to the South. Thus, such criteria as "good governance" or "public accountability" have themselves become objectives of development policy and cooperation both in North-South and in South-South relations (e.g. Lomé IV, Global Consultation for Africa, African Leadership Forum). A human rights policy conceived in the context of development policy thereby takes on new dimensions and holds new chances.

In view of the end of the East-West conflict and of the far-reaching trend towards democratization and human rights in different regions of the world (especially in Central and Eastern Europe, Latin America and Africa), the United Nations - for the first time in its almost 50-year history - is in a position of jointly attacking the global problems threatening humankind. Within the framework of the United Nations this approach calls for a globally conceived human rights policy pursued by all United Nations bodies, including the Security Council and such specialized agencies as the World Bank and the International Monetary Fund, whose policy of "structural adjustment" has had far-reaching consequences for the situation of human rights in the countries concerned.

On the basis of the standards set, the World Conference on Human Rights could serve as the ideal forum for laying the groundwork for an integrated concept of human rights protection within the framework of the United Nations. Such a concept will have to start from the root causes of human rights violations and can only be realized by means of structural reforms. Following is a more detailed account of certain proposals for an up-to-date human rights policy and for the necessary structural reform of the bodies of the United Nations entrusted with the protection of human rights and of its specialized agencies.

3. Recommendations concerning the interrelationship between human rights, development and democracy

It is a sign of a modern human rights policy and also the view of Austria that all development should focus on the human being and that human rights and development are indivisible and interrelated. Sustainable development can only be obtained if the political and economic potential of the whole population is mobilized and if the entire population participates in the development process (popular participation), which in turn draws on their creativity. This requires the promotion and safeguarding of human rights, be it of individual freedoms and of rights of political participation by individuals as well as by groups, or be it of their economic, social and cultural rights.

Therefore, Austria shares the conviction that in development policy and cooperation the promotion of human rights is essential. To guarantee individuals and groups the right to participate in the planning and implementation of development programmes and projects and the profit from them is a fundamental element of the democratic process and of the realization of an autonomous democracy. In Austria's view, the question of human rights protection, good governance and public accountability in the service of development is therefore a legitimate subject of the "constructive dialogue" between partners in development cooperation.

A specific problem of human rights promotion arises where the informal sector of the economy and non-governmental organizations - self-help and community development organizations, etc. - are disproportionately called upon to help satisfy basic needs. The involvement of voluntary development organizations at the grass-roots level constitutes an important contribution to the indigenous promotion of human rights and to the democratic process in the development context. In this connection, programmes and projects for the

advancement of the position of women, of the rural population and of marginal groups in society are of special significance. Electoral assistance and observation by national and international bodies are other means of guaranteeing free and fair democratic processes and hence of promoting and safeguarding human rights. In that sense, there is today a broader concept of the promotion and the protection of human rights, which in turn necessitates the provision of increased financial resources for the promotion of human rights in the service of overall development.

Within its means, Austria will do the utmost to pay due regard to the great importance of human rights protection in multilateral, interregional and bilateral development cooperation. Austria is equally committed to the furtherance of regional systems of human rights protection, with due consideration of the specific development criteria of a given region and in full observance of the universality of human rights protection.

In this context, the initiative, co-sponsored by Austria in 1987 within the framework of the United Nations, for a new international humanitarian order should be recalled. At the time, a report on this matter was draw up by the Independent Commission on International Humanitarian Issues (see General Assembly resolution 42/120 of 7 December 1987) which was composed of high-ranking politicians and eminent scholars from all parts of the world. From the Austrian point of view, the principles listed therein are of relevance also for the forthcoming World Conference on Human Rights in 1993. That report contains the following principle, among others:

> "International standards must be such as to be acceptable across a wide spectrum of cultures and ideologies. They must be based on the notion of the human species as a single, indivisible but pluralistic unit" (p. 9).

4. Proposals for the enhancement of human rights protection by the United Nations

The position of the Commission on Human Rights in the hierarchy of organs of the United Nations should be strengthened by transforming the Commission from a sub-organ of the Economic and Social Council into one of the main organs of the Untied Nations. The Commission should bear the primary responsibility for preventive, fact-finding and monitoring operations. The two existing separate procedures, i.e. the very time-consuming confidential procedure according to Economic and Social Council resolution 1503 (XLVIII) and the public procedure based on Council resolution 1235 (XLII), should be replaced by a joint and efficient fact-finding system. In order to enable the Commission to respond to human rights violations immediately, the "emergency mechanism", as proposed by Austria, should be adopted without further delay. Finally, the existing system of advisory services should be complemented by "human rights monitors". The Commission should also cooperate closely and systematically with the General Assembly and the Security Council.

While maintaining its status as an independent body of experts, the Sub-Commission on Prevention of Discrimination and Protection of Minorities ought to be transformed into a genuine "think tank" of the Commission on Human Rights. A clearer distinction is called for between the tasks of that

Sub-Commission and those of the Commission. For example, studies on the causes of human rights violations, proposals for preventive action as well as opinions on current human rights issues should be commissioned within the Sub-Commission. There is need for appropriate measures to guarantee the independence enjoyed by its members.

The procedures before the different treaty bodies ought to be coordinated much more efficiently than is the case now. In the short run, it seems advisable to create a special coordinating body. In the long run, the reporting system should rest with a single body of experts permanently in session. States should be induced to submit one report each, at periodic intervals of approximately four years, with regard to all those rights that they have pledged themselves to observe in treaties. Following the close examination of such a State report, the joint expert body ought to establish and publish a detailed report of its own on the human rights situation in the State under consideration.

Similarly, another joint expert body - different from the one charged with considering state reports - should be created to handle the individual communications procedures provided for in the Optional Protocol to the International Covenant on Civil and Political Rights as well as in other conventions (so far comprising the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and possibly to be extended to include such conventions as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child). Such a joint body might take the form of an International Court of Human Rights upon which jurisdiction could also be conferred for the criminal prosecution of individuals for certain human rights violations and/or crimes under international law.

The efficiency of all the bodies and procedures referred to depends on the human resources and financial endowment of the competent organizational unit of the Secretariat. Given the essential and ever-growing significance of human rights in the general context of all activities of the United Nations, it is no longer justifiable that less than 1 per cent of the total United Nations budget is being spent on human rights.

The Centre for Human Rights located in Geneva should be restructured following the pattern of the Office of the United Nations High Commission for Refugees and be given the personnel and financial potential necessary for the effective discharge of the following duties:

(a) The power to operate an "early warning system" designed to prevent human rights violations, and to become active as an advisory and mediating body for the settlement of human rights conflicts;

(b) The power to initiate investigations by the Commission on Human Rights and other bodies with a human rights mandate;

(c) The power to engage in multilateral development cooperation in the field of human rights by way of a special "human rights development agency" to be set up for this purpose;

(d) Information and education in the field of human rights, including the creation of a special academy for the training of United Nations human rights experts (on topics such as fact-finding, etc.).

(e) Compiling comprehensive documentation and databases on the de jure and de facto human rights situation in all countries of the world; in this context, data concerning specific human rights violations suffered by women should be collected;

(f) Comprehensive research conducted by an international research institute in the human rights field;

(g) Sufficient infrastructural support of the Commission on Human Rights and its specialized bodies (working groups, special rapporteurs, "human rights monitors", etc.), the Sub-Commission, the existing treaty bodies and the expert bodies to be newly created, including an International Court of Human Rights.

5. Concluding remarks

Only a few years ago, the above proposals would have seemed utopian. Even today, the financial, structural, legal and political problems connected with them must not be underestimated. However, the World Conference on Human Rights will take place at a period of profound global changes and of a redefinition of the role of the United Nations in many fields.

Twenty-five years after the International Conference in Tehran, it is gratifying that international standards for the protection of the human person in its entirety and for the safeguarding of its essential basic rights and fundamental freedoms in their indivisibility - encompassing civil and political, social, economic and cultural rights - have been successfully codified. Across all national, ideological, social and cultural frontiers, a consensus could be found in a series of human rights instruments on certain universally recognized and fundamental values of human existence.

Even so, systematic human rights violations of great extent persist, including wanton killings of human beings, enforced disappearances, arbitrary detention, as well as torture and other forms of degrading and inhuman treatment. Thus, it becomes evident that in many parts of the world there still exists a wide gap between the standards formulated in international human rights instruments and the reality of human rights.

Against this background, Austria feels called upon to take advantage of the present opportunities for global cooperation opening up in the human rights field within the framework of the United Nations, in particular on the occasion of the World Conference on Human Rights in 1993. Just as the Tehran Conference 25 years ago gave an essential impetus to shift the activities of the United Nations from the mere promotion to the protection of human rights, the Vienna Conference in 1993 should contribute to practical "enforcement", or

effective implementation, of the various safeguarding mechanisms by the end of the second millenium, and to combating the root causes of systematic human rights violations by preventive action.

Austria expects the forthcoming World Conference to meet the great challenges in the field of human rights at the end of the twentieth century and to submit concrete proposals to the General Assembly of the United Nations.